

## COVINGTON

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September 30, 2020

### Via FedEx and ECFS

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**Re:** *Submission of Confidential Information in WC Docket Nos 10-90;  
14-58; 07-135; CC Docket No. 01-92*

Dear Ms. Dortch:

TDS Telecommunications LLC (“TDS Telecom” or “the Company”) hereby submits this request for confidential treatment in connection with the attached Petition for Temporary Waiver (“Petition”) in the above captioned dockets. Because the Petition contains confidential information, a public version is being filed electronically via ECFS and the confidential version is being mailed to the Commission. TDS Telecom respectfully requests that, pursuant to Section 0.459 of the Commission’s rules,<sup>1</sup> the Commission withhold from public inspection, and grant confidential treatment to, the portions of the attached Petition marked CONFIDENTIAL.

The information marked as CONFIDENTIAL contains commercial and financial information that falls within Exemption 4 of the Freedom of Information Act (FOIA),<sup>2</sup> because it is “of a kind that would not customarily be released to the public;” therefore, this information is “confidential” under Exemption 4 of FOIA.<sup>3</sup> Additionally, TDS Telecom would suffer substantial competitive harm if the information marked CONFIDENTIAL were disclosed.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 0.459.

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>4</sup> See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

**COVINGTON**

September 30, 2020

Page 2

In support of this request, and pursuant to Section 0.459(b) of the Commission's rules,<sup>5</sup> TDS Telecom hereby states as follows:

**1. Identification of the specific information for which confidential treatment is sought**

TDS Telecom seeks confidential treatment of the information marked CONFIDENTIAL in the attached Petition.

**2. Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission**

TDS Telecom is submitting the Petition, including the information marked CONFIDENTIAL, in support of a request for waiver of certain of the Commission's rules and guidance in the above-captioned dockets.

**3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged**

The information marked CONFIDENTIAL contains proprietary financial and commercial information regarding funding sources of TDS Telecom and strategies for deployment of its services.

**4. Explanation of the degree to which the information concerns a service that is subject to competition**

The information marked CONFIDENTIAL contains sensitive and proprietary information, as well as operational information that TDS Telecom's competitors and others could use to disadvantage TDS Telecom. Disclosure of the information marked CONFIDENTIAL therefore would cause substantial competitive harm.

**5. Explanation of how disclosure of the information could result in substantial competitive harm**

Competitors could use the information marked CONFIDENTIAL to cause substantial competitive harm by using it to gain access to sensitive and proprietary information regarding the operation of TDS Telecom's business, which is information not ordinarily disclosed to the public.

**6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure**

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<sup>5</sup> 47 C.F.R. § 0.459(b).

COVINGTON

September 30, 2020

Page 3

TDS Telecom has not publicly disclosed the information marked CONFIDENTIAL in the attached Petition.

**7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties**

TDS Telecom has not publicly disclosed the information marked CONFIDENTIAL. Certain of the information marked CONFIDENTIAL has been submitted to USAC's High Cost Universal Broadband portal (the "HUBB"), but it has not been publicly disseminated.

**8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure**

TDS Telecom requests that the information marked CONFIDENTIAL be treated as confidential for a period of ten years. This period is necessary due to the sensitive nature of the information that would cause immediate and future competitive harms.

**9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted**

The information for which TDS Telecom seeks confidential treatment is necessary to fully explain to the Commission the circumstances giving rise to the Petition, but public disclosure of the information would harm the Company.

Please direct any questions regarding this filing to the undersigned.

Sincerely,



Matthew S. DelNero  
Thomas G. Parisi  
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Washington, DC 20001

*Counsel for TDS  
Telecommunications LLC*

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**Public Version**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92

**PETITION FOR TEMPORARY WAIVER OF TDS TELECOMMUNICATIONS LLC**

Pursuant to Section 1.3 of the Federal Communications Commission’s (“Commission”) Rules,<sup>1</sup> TDS Telecommunications LLC (“TDS Telecom” or “the Company”) respectfully requests that the Commission temporarily waive the first interim deployment milestone for the Company’s A-CAM-related service obligations<sup>2</sup> in California, until July 1, 2021. Despite TDS Telecom’s diligent efforts to meet this milestone, due to circumstances outside of its control and directly attributable to the ongoing COVID-19 pandemic, the Company will be unable to meet its first interim milestone in California by the specified deadline. Grant of this Petition will replace the substantial construction and engineering time lost as a result of the pandemic, and would serve the public interest by ensuring that TDS Telecom is not penalized for delays caused by the public health crisis.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> See 47 C.F.R. § 54.311(d).

**I. BUT FOR THE COVID-19 PANDEMIC, TDS TELECOM WOULD HAVE BEEN ON TRACK TO MEET ITS FIRST INTERIM DEPLOYMENT MILESTONE IN CALIFORNIA.**

TDS Telecom is an enthusiastic supporter of the A-CAM program, which it opted into in all 25 states it serves, including California. As with any major construction undertaking, TDS Telecom crafted a construction plan to meet the requirements, which factored in time to address typical delays that may be encountered along the way. However, the onset of the COVID-19 pandemic presented substantial and extraordinary challenges which could not have been reasonably anticipated when developing that plan.

The COVID-19 pandemic has disproportionately impacted TDS Telecom's buildout plans for California. In California, the A-CAM model identifies 2,339 fully-funded locations within TDS Telecom's footprint. Under the first interim deployment milestone, the Company is required to bring broadband service of 10/1 mbps to 935 of those locations. TDS Telecom was well on track to meet its first interim deployment milestone in California, having completed deployment to **[[BEGIN CONFIDENTIAL INFORMATION]]** **[[END CONFIDENTIAL INFORMATION]]** locations and made substantial progress to enable broadband service to an additional set of locations that would enable it to surpass this milestone. The sequencing of particular individual projects in TDS Telecom's buildout plans is designed to ensure that interim milestones are met along the way.

The expected shortfall largely relates to one of TDS Telecom's major A-CAM projects in California that will serve **[[BEGIN CONFIDENTIAL INFORMATION]]** **[[END CONFIDENTIAL INFORMATION]]** locations around the town of Winterhaven.<sup>3</sup> Absent the

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<sup>3</sup> This number of locations, as with the others presented throughout, are approximate because the total locations could differ as a result of variation in the actual constructed loop lengths as compared to the project plans.

## Public Version

pandemic, the Company would have completed its scheduled build for this year. Engineering of the Winterhaven project began long before the onset of the pandemic, and the Company has completed substantial work required to build out to the locations. For example, the Company worked to obtain rights-of-way in the Quechan Indian Tribe's Reservation, which was central to the success of the project, as there are no public rights-of-way on the Reservation. The Company knew that obtaining rights-of-way and completing other necessary pre-construction work could be time consuming, so it planned for and budgeted appropriate time. With all of its plans in place, TDS moved forward with construction the week of March 2, 2020 and continued until the Company received a work stop order from the Quechan Indian Tribe citing COVID-19 as the concern on April 7, 2020. The project also requires the Company to bore underneath a pipeline and a railroad track, and the prep work for the crossing was complete the day the Company received the work stoppage notice, with the bore scheduled for the following day. Prior to the stop work order, TDS Telecom completed approximately 33% of the outside plant construction, and 95% of the duct is in place to house the fiber for the Winterhaven project. Once the fiber is placed, the Company can begin splicing the fiber together and conducting quality assurance testing.

While the greatest impact on TDS Telecom's 2020 buildout in California occurred in Winterhaven, the pandemic also created significant delays in the Company's buildout in another part of the state, in Hornitos, California. With this project, which was also scheduled to be completed in 2020, TDS Telecom would have made service available to an additional **[[BEGIN CONFIDENTIAL INFORMATION]]** **[[END CONFIDENTIAL INFORMATION]]** locations. The completion of these two projects would have resulted in TDS Telecom making service available to more than the required number of locations for the first interim deployment

milestone. As part of the plans for the Hornitos build, the Company's microwave engineering contractor was scheduled to make a trip to Hornitos in early March. This trip was essential to enable equipment engineering, specification, and proper FCC licensing for the project.

However, COVID-19 travel restrictions delayed the trip until the week of June 24, upending the work necessary to complete this on-the-ground diligence and investigation. This pushed out the planned timeline for the project's completion.

Thus, the Company's steady progress was brought to a sudden halt with the alarming rise in COVID-19 cases in California and around the country. Since that time, to protect the individuals building TDS Telecom's network, as well as to comply with state health restrictions and the work stop order, the Company had been unable to continue deployment of its network in California. California has been especially hard-hit by COVID-19 and it now has the highest number of cases in the country.<sup>4</sup> While the Company feels the impacts of the pandemic on other ongoing projects, the scale of the Winterhaven and Hornitos projects and their key position in fulfilling the first interim deployment milestone are especially notable.

TDS Telecom resumed work on the Winterhaven project in mid-September, and the Company estimates it will take until July 1, 2021 to make service available to the planned number of locations. The Company expects that it should also be able to complete the Hornitos project within this timeframe. Put another way, absent the delays brought on by the pandemic, TDS Telecom would have met the first interim deployment milestone in California. The sudden and abrupt stop in progress caused by the pandemic directly impeded critical work and caused unforeseeable delays in otherwise well-designed and well-executed builds.

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<sup>4</sup> See *United States COVID-19 Cases and Deaths by State*, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/covid-data-tracker/#cases>.

## II. GRANT OF THE REQUESTED PANDEMIC-RELATED WAIVER WOULD SERVE THE PUBLIC INTEREST.

TDS Telecom has made substantial progress in meeting its buildout obligations in California, but absent a waiver, the Company will be subjected to substantial penalties because of circumstances wholly outside of its control. The Commission's rules may be waived for good cause shown,<sup>5</sup> and the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>6</sup> The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>7</sup> Waiver of the Commission's rules is appropriate where (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>8</sup>

A. *Providing the Requested Waiver Would Serve the Public Interest by Enabling TDS Telecom to Focus on Deploying Broadband.*

Because of the substantial barriers to deployment caused by the COVID-19 pandemic, absent a waiver, TDS Telecom will be subjected to Tier **[[BEGIN CONFIDENTIAL INFORMATION]]** **[[END CONFIDENTIAL INFORMATION]]** non-compliance penalties as a direct result of circumstances outside of its control. Pursuant to the Commission's rules,<sup>9</sup> USAC will **[[BEGIN CONFIDENTIAL INFORMATION]]**

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<sup>5</sup> 47 C.F.R. §1.3.

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>7</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>8</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> *See* 47 C.F.R. §54.320(d)(1).



**[[END CONFIDENTIAL  
INFORMATION]].**

The Company had in place build plans with adequate time to address any routine delays. The pandemic has completely upended this extensive planning TDS Telecom put in place to avoid the chance of missing a deployment deadline. Given the uncertainty the COVID-19 pandemic continues to cause, in the absence of the requested relief, TDS Telecom could remain in Tier **[[BEGIN CONFIDENTIAL INFORMATION]] [[END CONFIDENTIAL INFORMATION]]** status for the foreseeable future. These measures and penalties will unnecessarily deprive the Company of resources to continue to connect more people and businesses in California to broadband.

As discussed below, implementing these penalties will not serve the public interest because special circumstances out of the Company's control have caused deployment to fall well behind its careful plans. Reducing funding for a provider who would have completed buildout in a timely manner, and who is still committed to so doing, would undermine the Commission's goal to "spur new broadband deployment in rural areas, which will help close the digital divide."<sup>10</sup> The public health crisis has also highlighted the critical importance of broadband in everyday life, so inhibiting TDS Telecom's ability to provide broadband to more Americans contravenes the Commission's policy objectives. Indeed, TDS Telecom is committed to offering

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<sup>10</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3096 at para. 20 (2016).

reliable service as widely as possible, and was an enthusiastic signatory to Chairman Pai’s “Keep Americans Connected” pledge, even being noted as a company that has “gone above and beyond the call to keep Americans connected during [the] pandemic.”<sup>11</sup> TDS Telecom has done its part to respond to COVID-19, and this waiver seeks to ameliorate the impacts the pandemic has had on the Company’s A-CAM obligations.

*B. Grant of the Temporary Waiver in This Case Would Not Undermine the Purpose of the Buildout Rule.*

The Commission applies interim milestone obligations (such as for CAF-II, A-CAM, and RDOF) to ensure that high cost recipients have sufficient incentive to build out service on a timely basis and remain reasonably on track to meet final deployment deadlines. In doing so, the Commission “safeguard[s] the use of public funds.”<sup>12</sup> Here, TDS Telecom has had ample incentive to build out service on a timely basis, and was well on track to surpass the first interim deployment milestone before the pandemic ravaged the country and the State of California. TDS Telecom understands and appreciates the importance of these obligations, which is why the Company developed a detailed construction plan to ensure these interim milestones would be met under normal circumstances.

Moreover, the Company has made clear it would resume construction once public health conditions permit, and indeed recommenced work in mid-September. To this point, the pandemic has created an approximately six month delay in which no work could be completed at

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<sup>11</sup> *Companies Have Gone Above and Beyond the Call to Keep Americans Connected During Pandemic*, FCC, available at <https://www.fcc.gov/companies-have-gone-above-and-beyond-call-keep-americans-connected-during-pandemic> (noting TDS Telecom’s additional commitments: “[p]roviding new customers who received 60 days of free internet service a \$10 credit off their bill for their next six months of service; offered free broadband to new customers who are low-income and/or families with children or college students for the next 60 days.”).

<sup>12</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17726, para. 161 (2011).

all. It also impeded necessary preliminary engineering work for the Hornitos project. This upended TDS Telecom’s carefully planned buildout schedule, through no fault of the Company.

*C. The Commission has Recognized Repeatedly that the COVID-19 Pandemic is an Unprecedented Challenge Facing Carriers and Warrants Appropriate Waivers of Commission Rules, Including USF-Related Deadlines.*

The COVID-19 pandemic has caused unforeseeable special circumstances impeding TDS Telecom’s plans for broadband buildout in California. The Commission itself has recognized, on multiple occasions, the unique problems faced in the communications industry as a direct result of the public health crisis. Accordingly, the Commission has granted waivers and other forms of assistance in a variety of different contexts to help providers meet the challenges presented by the pandemic, including with respect to deadlines related to the Universal Service Fund.<sup>13</sup> In one example, another bureau has even noted the particular impact that the pandemic has had on projects involving construction: “[w]e recognize that the construction and delivery delays that are occurring as a result of the COVID-19 pandemic, as well as efforts undertaken by the stations themselves to protect the health of their employees and their families, result from circumstances

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<sup>13</sup> See, e.g., *Wireline Competition Bureau Directs USAC to Extend E-Rate Application Filing Window for Funding Year 2020 Due to Potential Coronavirus Disruptions*, CC Docket No. 02-6, Public Notice, DA 20-273 (WCB Mar. 13, 2020) (extending the deadline to submit applications to “minimize potential disruptions caused by coronavirus disease 2019 (COVID-19)”; *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, DA 20-345 at para. 1 (WCB Mar. 26, 2020) (extending application deadlines, easing competitive bidding requirements, and extending procedural deadlines “to allow health care providers to focus their attention on their immediate task at hand—addressing the influx of patients associated with the COVID-19 outbreak and maintaining care for existing patients, thereby helping to control the spread of this serious pandemic, without the diversion of near-term RHC Program administrative requirements.”); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-891 at para. 2 (WCB Aug. 17, 2020) (“In light of the ongoing pandemic, we find good cause to extend, on our own motion, our prior waivers of certain Lifeline program rules governing recertification, reverification, general reenrollment, subscriber usage, income documentation, and documentation requirements for subscribers residing in rural areas on Tribal lands through November 30, 2020. We will continue to monitor the situation to determine whether any additional extension of these waivers is appropriate.”) (internal citation omitted).

outside of a station's control.”<sup>14</sup> These are the same types of delays that TDS Telecom is experiencing, and grant of the requested waiver would provide the opportunity for the Company to focus on deploying broadband to unserved and underserved areas instead of planning to deal with funding shortfalls caused by circumstances outside of the Company's control.

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<sup>14</sup> *Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition as a Result of the Novel Coronavirus (COVID-19) Pandemic*, MB Docket No. 16-306; GN Docket No. 12-268, Public Notice, DA 20-282 (MB Mar. 17, 2020).

**CONCLUSION**

TDS Telecom is committed to meeting its deployment obligations and providing quality service to help close the digital divide. The purpose of this waiver is to provide limited relief to the Company so that it can move forward with buildout plans derailed by the COVID-19 pandemic. TDS Telecom fully intends to offer service to the required number of locations and has plans in place to achieve this important goal. The waiver will ensure that the Company can focus on carrying out its plans without the distraction of penalties that would otherwise be assessed based on circumstances entirely outside of the Company's control. Accordingly, TDS Telecom respectfully requests grant of this waiver.

**TDS TELECOMMUNICATIONS LLC**

By:

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September 30, 2020

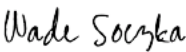
**DECLARATION OF WADE D. SOCZKA**

The undersigned, Wade D. Soczka hereby declares as follows:

1. I am Director – Network Construction at TDS Telecommunications LLC (“TDS Telecom”).
2. I am authorized to make this Declaration on behalf of TDS Telecom.
3. The foregoing Petition for Temporary Waiver of TDS Telecommunications LLC (“Waiver Petition”) was prepared under my direction and supervision.
4. The contents of the Waiver Petition are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24<sup>th</sup> day of September, 2020.

DocuSigned by:  
  
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Name: Wade D. Soczka

Title: Director - Network Construction